

TAB

THE WHITE HOUSE
WASHINGTON

June 18, 1973

MINUTES OF JUNE 13, 1973
MEETING OF THE INTERAGENCY CLASSIFICATION
REVIEW COMMITTEE

Participants:

Dr. James B. Rhoads - Acting Chairman
Charles N. Brower - State
David O. Cooke - Defense
Lawrence R. Houston - CIA
Richard T. Kennedy - NSC
Charles L. Marshall - AEC
James E. O'Neill - Archives
Leon Ulman - Justice

Attending:

Osborne Day - NSC

CIA

STATINTL

Joseph J. Liebling - Defense
Dudley C. Mecum - OMB
Mark A. Spiegel - State
Richard C. Tufaro - Domestic Council

Proceedings:

Dr. Rhoads took a moment to greet several new representatives attending the Committee meeting, Messrs. Cooke and Liebling on behalf of the Defense Department, Mr. Mecum from OMB attending at the invitation of the Acting Chairman, and Messrs. Kennedy and Day from NSC, the former filling in for General Scowcroft who has been designated as the permanent NSC staff representative to the ICRC.

The following items were discussed in the order in which they appeared on the agenda:

2. Dr. Rhoads recounted the deliberations of the Committee at its meeting on May 2nd with regard to the downgrading of material classified under a predecessor Order to E. O. 11652 and placed in the Group 3

category. At that meeting the Justice Department was asked to review a draft letter of interpretation authorizing downgrading of Group 3 material in order to satisfy the void now contained in Section 5 (D) of the Executive Order.

Mr. Ulman reviewed the opinion of the Justice Department. By the express terms of E. O. 11652, Group 3 material is excluded from the General Declassification Schedule. This material cannot be subjected to a provision of E. O. 10501, as amended, because that Order has been specifically superseded by E. O. 11652. Moreover, there is nothing in the language of E. O. 11652 which suggests that Group 3 material was intended to be subjected to the downgrading schedule originally specified in E. O. 10501, as amended. An interpretation of E. O. 11652 which would apply this superseded provision of E. O. 10501 as amended cannot be accomplished without risking interpretations carrying forward other superseded portions of the old Order. In conclusion, it is the view of the Justice Department that the only method for the ICRC to accomplish the downgrading of Group 3 material is to amend E. O. 11652.

Dr. Rhoads said that the question then before the Committee was whether to propose an amendment of the Executive Order at this time or to wait until other matters which might require amendments become clearer. In particular, the Ad Hoc Working Group on exemption authority and classification guides may propose amendments which should be considered by the Committee. Dr. Rhoads felt the Committee could probably afford to wait but asked for the views of Defense and AEC on proceeding at this time.

Mr. Cooke stated that it was the view of the Defense Department that the head of a department has authority to downgrade or declassify these materials. Because of the interest and potential financial savings related to this matter, Defense intends to study and make recommendations to the Secretary of Defense for appropriate action.

After reviewing Section 3(A) of the Order, Mr. Ulman said he tended to agree with the Defense Department interpretation. Section 5(D) excludes Group 3 material from the General Declassification Schedule, but it does not preclude downgrading or declassification in accordance with a schedule adopted by a department head.

A motion was introduced by Mr. Marshall and duly seconded expressing the view of the Committee that the head of a department or agency has authority under E. O. 11652 to downgrade or declassify any classified information originated by his department either by categories of docu-

ments or information or by specific documents. This motion was adopted unanimously by the Committee. Mr. Tufaro was asked to draft appropriate language and circulate it to the members for their approval.

It was also the consensus of the Committee that the Ad Hoc Group on exemption authority and classification guides should recommend whether the Executive Order should be amended to apply the General Declassification Schedule and the exemption categories retroactively to materials classified under a predecessor Order and falling in Groups 1, 2 or 3.

STATINTL 3. Mr. Ulman stated that toward the end of last week, a draft letter was received from [] suggesting the Department of Justice concurrence in a proposal that certain CIA material be excluded from the appeals jurisdiction of the ICRC under E.O. 11652. The draft proposal was considered by officials in Justice, but in view of the Attorney General's pending appearance before Congress on June 26 to testify on various classification matters, it was considered necessary to consult with Mr. Richardson before determining whether Justice should concur or not. Mr. Ulman said he could not give a specific date when a decision will be made by the Attorney General, but he expects it to be before the next meeting.

Dr. O'Neill stated that in reviewing the appeals procedures, one other matter came to his attention. According to Section IIIB of the NSC Directive, the determination of continued classification for materials 30 or more years old must be made by the head of the department. In this event, the Departmental Committee will not be involved in the reviewing process. Section 3C of the Committee's draft appeals procedures would make acceptance of all appeals discretionary, however. This could result in a requester having no appellate review when the requested document is 30 or more years old. Accordingly, Dr. O'Neill proposed that Section 3C of the appeals procedures be amended to make acceptance of appeals related to 30 year old documents mandatory for the ICRC.

Mr. Marshall suggested that it was his interpretation of Section IIIB of the NSC Directive that a request should still go to the Departmental Committee before the department head was asked to make a determination. Mr. Ulman stated that under the Freedom of Information Act a similar procedure is followed by Justice. The denial may be prepared by an official in the Justice Department, but the Attorney General will specifically sign the denial.

Dr. Rhoads asked Mr. Tufaro to circulate language to effectuate the

change proposed by Dr. O'Neill and asked all the members to be prepared for a final vote on the procedures at the next meeting.

4. Mr. Tufaro reviewed the request of Ambassador Eisenhower to the National Archives and Records Service for assistance to the ICRC in developing the Committee's Quarterly Report forms and instructions, the data index system instructions, consolidated forms for document security, and a handbook elaborating on various procedures and safeguards in this area. He indicated that over the past several months the Archives has been reviewing forms for document security. The working sessions described in an earlier memorandum to the Committee members explained the effort to consolidate the many forms used throughout the various departments. At the first working session, Mr. Tufaro explained that he had advised the group representatives of the inter-relationship between standard and optional forms and the goals of E. O. 11652. He then circulated a list of the attendees and asked if the Committee members could review the list to ensure that those representing their departments had adequate authority and experience so that the work of this group can be fruitful. Any changes or additions should be passed on to Mr. Tufaro.

Mr. Tufaro added that the work of the National Archives has been extremely valuable and of great assistance to the work of this Committee. He asked that the Committee, at an appropriate time, express its appreciation to those who have worked so hard and so constructively on the matters just discussed.

5. Dr. Rhoads explained to the Committee members what was contemplated by this agenda item. The title might perhaps be a little inappropriate. It was considered useful, however, to establish a method for passing to the heads of the Departmental Committees information of general interest related to the actions of the ICRC at its meetings. A list of items appropriate for inclusion in such information memoranda was circulated to the members. Mr. Brower asked whether the list was exhaustive of those actions which should be included in such memoranda. Dr. Rhoads replied that the list was simply representative of the kinds of things which should be passed on.

Mr. Kennedy said that the only question in his mind related to the format of the memoranda in a bureaucratic sense. If the memoranda are simply informational, it would appear appropriate for the memoranda to be signed by the Chairman and directed to the heads of the various departments. Where the action is directive, it should perhaps be passed through the NSC system, since the ICRC is established to assist the NSC.

Mr. Kennedy said directive memoranda should receive more careful thought and analysis.

It was the consensus of the Committee that information memoranda should be circulated with the minutes so that changes can be called in by the members. When approved, they will be circulated to the heads of departments and agencies and to the Chairmen of the Departmental Committees.

6. Other Business:

A. A new draft of the brochure on mandatory declassification requests was circulated to the members of the Committee. The draft is based on substantial changes suggested by the State Department. Dr. Rhoads asked the members to submit their comments by early next week. Mr. Kennedy asked whether it was the intention of the Committee that this brochure be widely distributed to the academic community and the media. Dr. Rhoads said it was and that distribution could also be made through the various departments and stocked by the Government Printing Office.

B. Dr. Rhoads stated that only Defense and AEC have given us the names of their respective representatives on the Ad Hoc Group on exemption authority and classification guides. The other members were asked to indicate their representatives at the earliest possible date. Mr. Kennedy said that Os Day would represent NSC. Mr. Houston stated that [] would represent CIA.

C. Dr. Rhoads reported that in accordance with procedures previously adopted by the ICRC, amendments to the Justice Department regulations on classification were circulated to the Committee members for comment. The only comment related to the requirement that a requester appeal the denial of his declassification request to the Departmental Committee within 30 days. Dr. O'Neill stated that since the department had 60 days to act on the request, it might be more evenhanded to allow 60 days to file an appeal. Mr. Kennedy asked what the value of this provision was, since a new request could be filed immediately and the files were available anyway. It was generally agreed that administratively this provision would help in dealing with declassification requests and that 30 days provided sufficient time to file an appeal. Accordingly, the Justice Department was advised that its regulations were approved.

D. Dr. Rhoads asked if Mr. Kennedy could report to the ICRC at its next meeting on the status of the Stueck declassification appeal sent

to Dr. Kissinger on January 10th. The NSC Quarterly Report of De-classification Requests for January 1 - March 31 was also still outstanding. Apparently, the period in which NSC was without a representative had allowed these matters to slip through the cracks.

E. Mr. Brower raised the question whether documents from a non-governmental source can be classified when received by a government agency. He indicated that U.S. originated documents containing information from private sources are frequently classified. The question was whether such documents can be classified if the agency decides that such information originated by the government would require that it be classified. In most cases, there are probably other exemptions of the Freedom of Information Act available. It was the consensus of the Committee that the Executive Order permits and requires that such information be classified if its disclosure could result in damage to the national security.

F. Dr. Rhoads announced the resignation of Mr. Tufaro effective June 30th and expressed his appreciation on behalf of the Committee for his work. Mr. Tufaro indicated his thanks and his pleasure at working with all the members of the Committee.